

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

UYEN ANH PHAM

Case No. 2012-704

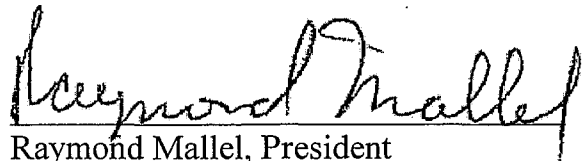
Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **March 8, 2013**.

IT IS SO ORDERED **February 7, 2013**.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 **UYEN ANH PHAM**

14 Respondent.

Case No. 2012-704

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
18 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
19 which will be submitted to the Board for approval and adoption as the final disposition of the
20 Statement of Issues.

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
23 Registered Nursing. She brought this action solely in her official capacity and is represented in
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Ron Espinoza,
25 Deputy Attorney General.

26 2. Uyen Anh Pham (Respondent) is representing herself in this proceeding and has
27 chosen not to exercise her right to be represented by counsel.

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1 3. On or about November 28, 2011, Respondent filed with the Board of Registered
2 Nursing an application dated November 18, 2011, to obtain a registered nurse license.

3 JURISDICTION

4 4. Statement of Issues No. 2012-704 was filed before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Statement of Issues and all other statutorily required documents were properly served on
7 Respondent on May 21, 2012. A copy of Statement of Issues No. 2012-704 is attached as
8 Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Statement of Issues No. 2012-704. Respondent has also carefully read, and understands the
12 effects of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
15 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
16 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
17 to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Statement of
24 Issues No. 2012-704.

25 9. Respondent agrees that her application for a registered nurse license is subject to
26 denial and she agrees to be bound by the Board's probationary terms as set forth in the
27 Disciplinary Order below.

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

STIPULATED SETTLEMENT (2012-704)

1 3. **Report in Person.** Respondent, during the period of probation, shall appear in
2 person at interviews/meetings as directed by the Board or its designated representatives.

3 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
4 practice as a registered nurse outside of California shall not apply toward a reduction of this
5 probation time period. Respondent's probation is tolled, if and when she resides outside of
6 California. Respondent must provide written notice to the Board within 15 days of any change of
7 residency or practice outside the state, and within 30 days prior to re-establishing residency or
8 returning to practice in this state.

9 Respondent shall provide a list of all states and territories where she has ever been licensed
10 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
11 information regarding the status of each license and any changes in such license status during the
12 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
13 license during the term of probation.

14 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
15 or cause to be submitted such written reports/declarations and verification of actions under
16 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
17 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
18 Respondent shall immediately execute all release of information forms as may be required by the
19 Board or its representatives.

20 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
21 state and territory in which she has a registered nurse license.

22 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
23 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
24 6 consecutive months or as determined by the Board.

25 For purposes of compliance with the section, "engage in the practice of registered nursing"
26 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
27 non-direct patient care position that requires licensure as a registered nurse.

28 The Board may require that advanced practice nurses engage in advanced practice nursing

1 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

2 If Respondent has not complied with this condition during the probationary term, and
3 Respondent has presented sufficient documentation of her good faith efforts to comply with this
4 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
5 extension of Respondent's probation period up to one year without further hearing in order to
6 comply with this condition. During the one year extension, all original conditions of probation
7 shall apply.

8 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
9 prior approval from the Board before commencing or continuing any employment, paid or
10 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
11 performance evaluations and other employment related reports as a registered nurse upon request
12 of the Board.

13 Respondent shall provide a copy of this Decision to her employer and immediate
14 supervisors prior to commencement of any nursing or other health care related employment.

15 In addition to the above, Respondent shall notify the Board in writing within seventy-two
16 (72) hours after she obtains any nursing or other health care related employment. Respondent
17 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
18 separated, regardless of cause, from any nursing, or other health care related employment with a
19 full explanation of the circumstances surrounding the termination or separation.

20 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
21 Respondent's level of supervision and/or collaboration before commencing or continuing any
22 employment as a registered nurse, or education and training that includes patient care.

23 Respondent shall practice only under the direct supervision of a registered nurse in good
24 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
25 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
26 approved.

27 Respondent's level of supervision and/or collaboration may include, but is not limited to the
28 following:

1 (a) Maximum - The individual providing supervision and/or collaboration is present in
2 the patient care area or in any other work setting at all times.

3 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
4 care unit or in any other work setting at least half the hours Respondent works.

5 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
6 person communication with Respondent at least twice during each shift worked.

7 (d) Home Health Care - If Respondent is approved to work in the home health care
8 setting, the individual providing supervision and/or collaboration shall have person-to-person
9 communication with Respondent as required by the Board each work day. Respondent shall
10 maintain telephone or other telecommunication contact with the individual providing supervision
11 and/or collaboration as required by the Board during each work day. The individual providing
12 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
13 patients' homes visited by Respondent with or without Respondent present.

14 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
15 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
16 or for an in-house nursing pool.

17 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
18 registered nursing supervision and other protections for home visits have been approved by the
19 Board. Respondent shall not work in any other registered nursing occupation where home visits
20 are required.

21 Respondent shall not work in any health care setting as a supervisor of registered nurses.
22 The Board may additionally restrict Respondent from supervising licensed vocational nurses
23 and/or unlicensed assistive personnel on a case-by-case basis.

24 Respondent shall not work as a faculty member in an approved school of nursing or as an
25 instructor in a Board approved continuing education program.

26 Respondent shall work only on a regularly assigned, identified and predetermined
27 worksite(s) and shall not work in a float capacity.

28 If Respondent is working or intends to work in excess of 40 hours per week, the Board may

1 request documentation to determine whether there should be restrictions on the hours of work.

2 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
3 successfully complete a course(s) relevant to the practice of registered nursing no later than six
4 months prior to the end of her probationary term.

5 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
6 Respondent shall submit to the Board the original transcripts or certificates of completion for the
7 above required course(s). The Board shall return the original documents to Respondent after
8 photocopying them for its records.

9 **11. Violation of Probation.** If Respondent violates the conditions of her probation, the
10 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
11 and impose the stayed discipline (revocation) of Respondent's license.

12 If during the period of probation, an accusation or petition to revoke probation has been
13 filed against Respondent's license or the Attorney General's Office has been requested to prepare
14 an accusation or petition to revoke probation against Respondent's license, the probationary
15 period shall automatically be extended and shall not expire until the accusation or petition has
16 been acted upon by the Board.

17 **12. License Surrender.** During Respondent's term of probation, if she ceases practicing
18 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
19 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
20 Respondent's request and to exercise its discretion whether to grant the request, or to take any
21 other action deemed appropriate and reasonable under the circumstances, without further hearing.
22 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
23 subject to the conditions of probation.

24 Surrender of Respondent's license shall be considered a disciplinary action and shall
25 become a part of Respondent's license history with the Board. A registered nurse whose license
26 has been surrendered may petition the Board for reinstatement no sooner than the following
27 minimum periods from the effective date of the disciplinary decision:

28 (1) Two years for reinstatement of a license that was surrendered for any reason other

1 than a mental or physical illness; or

2 (2) One year for a license surrendered for a mental or physical illness.

3 13. **Physical Examination.** Within 45 days of the effective date of this Decision,
4 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
5 assistant, who is approved by the Board before the assessment is performed, submit an
6 assessment of the Respondent's physical condition and capability to perform the duties of a
7 registered nurse, including a determination as set forth below in the condition titled "Rule-Out
8 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
9 the Board. If medically determined, a recommended treatment program will be instituted and
10 followed by the Respondent with the physician, nurse practitioner, or physician assistant
11 providing written reports to the Board on forms provided by the Board.

12 If Respondent is determined to be unable to practice safely as a registered nurse, the
13 licensed physician, nurse practitioner, or physician assistant making this determination shall
14 immediately notify the Board and Respondent by telephone, and the Board shall request that the
15 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
16 immediately cease practice and shall not resume practice until notified by the Board. During this
17 period of suspension, Respondent shall not engage in any practice for which a license issued by
18 the Board is required until the Board has notified Respondent that a medical determination
19 permits Respondent to resume practice. This period of suspension will not apply to the reduction
20 of this probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within the 45-day
22 requirement, Respondent shall immediately cease practice and shall not resume practice until
23 notified by the Board. This period of suspension will not apply to the reduction of this
24 probationary time period. The Board may waive or postpone this suspension only if significant,
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
26 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
27 Only one such waiver or extension may be permitted.

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1 **14. Mental Health Examination.** Respondent shall, within 45 days of the effective date
2 of this Decision, have a mental health examination including psychological testing as appropriate
3 to determine her capability to perform the duties of a registered nurse, including a determination
4 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The
5 examination will be performed by a psychiatrist, psychologist or other licensed mental health
6 practitioner approved by the Board. The examining mental health practitioner will submit a
7 written report of that assessment and recommendations to the Board. All costs are the
8 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
9 result of the mental health examination will be instituted and followed by Respondent.

10 If Respondent is determined to be unable to practice safely as a registered nurse, the
11 licensed mental health care practitioner making this determination shall immediately notify the
12 Board and Respondent by telephone, and the Board shall request that the Attorney General's
13 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
14 practice and may not resume practice until notified by the Board. During this period of
15 suspension, Respondent shall not engage in any practice for which a license issued by the Board
16 is required, until the Board has notified Respondent that a mental health determination permits
17 Respondent to resume practice. This period of suspension will not apply to the reduction of this
18 probationary time period.

19 If Respondent fails to have the above assessment submitted to the Board within the 45-day
20 requirement, Respondent shall immediately cease practice and shall not resume practice until
21 notified by the Board. This period of suspension will not apply to the reduction of this
22 probationary time period. The Board may waive or postpone this suspension only if significant,
23 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
24 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
25 Only one such waiver or extension may be permitted.

26 **15. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical
27 and/or mental health examination determines that the respondent is dependent upon drugs or
28 alcohol, or has had problems with drugs or alcohol (i.e., drug dependence in remission or alcohol

dependence in remission), that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation:

A. Participate in Treatment/Rehabilitation Program for Chemical

Dependence. Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

B. Abstain from Use of Psychotropic (Mood-Altering) Drugs. Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent

1 shall have sent to the Board, in writing and within fourteen (14) days, by the
2 prescribing health professional, a report identifying the medication, dosage, the
3 date the medication was prescribed, the Respondent's prognosis, the date the
4 medication will no longer be required, and the effect on the recovery plan, if
5 appropriate.

6 Respondent shall identify for the Board a single physician, nurse
7 practitioner or physician assistant who shall be aware of Respondent's history of
8 substance abuse and will coordinate and monitor any prescriptions for Respondent
9 for dangerous drugs, controlled substances or mood-altering drugs. The
10 coordinating physician, nurse practitioner, or physician assistant shall report to the
11 Board on a quarterly basis Respondent's compliance with this condition. If any
12 substances considered addictive have been prescribed, the report shall identify a
13 program for the time limited use of any such substances.

14 The Board may require the single coordinating physician, nurse
15 practitioner, or physician assistant to be a specialist in addictive medicine, or to
16 consult with a specialist in addictive medicine.

17 **C. Submit to Tests and Samples.** Respondent, at her expense, shall
18 participate in a random, biological fluid testing or a drug screening program which
19 the Board approves. The length of time and frequency will be subject to approval
20 by the Board. Respondent is responsible for keeping the Board informed of
21 Respondent's current telephone number at all times. Respondent shall also ensure
22 that messages may be left at the telephone number when she is not available and
23 ensure that reports are submitted directly by the testing agency to the Board, as
24 directed. Any confirmed positive finding shall be reported immediately to the
25 Board by the program and Respondent shall be considered in violation of
26 probation.

27 In addition, Respondent, at any time during the period of probation, shall
28 fully cooperate with the Board or any of its representatives, and shall, when

1 requested, submit to such tests and samples as the Board or its representatives may
2 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
3 controlled substances.

4 If Respondent has a positive drug screen for any substance not legally
5 authorized and not reported to the coordinating physician, nurse practitioner, or
6 physician assistant, and the Board files a petition to revoke probation or an
7 accusation, the Board may suspend Respondent from practice pending the final
8 decision on the petition to revoke probation or the accusation. This period of
9 suspension will not apply to the reduction of this probationary time period.

10 If Respondent fails to participate in a random, biological fluid testing or
11 drug screening program within the specified time frame, Respondent shall
12 immediately cease practice and shall not resume practice until notified by the
13 Board. After taking into account documented evidence of mitigation, if the Board
14 files a petition to revoke probation or an accusation, the Board may suspend
15 Respondent from practice pending the final decision on the petition to revoke
16 probation or the accusation. This period of suspension will not apply to the
17 reduction of this probationary time period.

18 **D. Therapy or Counseling Program.** Respondent, at her expense, shall
19 participate in an on-going counseling program until such time as the Board
20 releases her from this requirement and only upon the recommendation of the
21 counselor. Written progress reports from the counselor will be required at various
22 intervals.

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DATED:

UYEN ANH PHAM
Respondent

Dated: 5-17-12

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

STIPULATED SETTLEMENT (2012-704)

Exhibit A

Statement of Issues No. 2012-704

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13 **UYEN ANH PHAM**

14 Respondent.

Case No. 2012-704

STATEMENT OF ISSUES

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about November 28, 2011, the Board of Registered Nursing, Department of
22 Consumer Affairs, received an application for a registered nurse license from Uyen Anh Pham
23 (Respondent). On or about November 18, 2011, Respondent certified under penalty of perjury to
24 the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on December 27, 2011. On or about January 4, 2012, Respondent made a
26 written request to the Board for an appeal of the denial of the application.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
or profession for which application is made.

5 (b) Notwithstanding any other provision of this code, no person shall be denied
6 a license solely on the basis that he or she has been convicted of a felony if he or she
7 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
8 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

9 (c) A board may deny a license regulated by this code on the ground that the
10 applicant knowingly made a false statement of fact required to be revealed in the
application for the license.

11 7. Section 482 of the Code states:

12 Each board under the provisions of this code shall develop criteria to evaluate
13 the rehabilitation of a person when:

14 (a) Considering the denial of a license by the board under Section 480; or

15 (b) Considering suspension or revocation of a license under Section 490.

16 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

17 8. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a
19 board within the department pursuant to law to deny an application for a license or to
20 suspend or revoke a license or otherwise take disciplinary action against a person who
21 holds a license, upon the ground that the applicant or the licensee has been convicted
22 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

23 As used in this section, "license" includes "certificate," "permit," "authority,"
24 and "registration."

25 9. Section 2761 of the Code states:

26 The board may take disciplinary action against a certified or licensed nurse or
27 deny an application for a certificate or license for any of the following:

28 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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2 (f) Conviction of a felony or of any offense substantially related to the
3 qualifications, functions, and duties of a registered nurse, in which event the record of
4 the conviction shall be conclusive evidence thereof.

5 10. Section 2762 of the Code states:

6 In addition to other acts constituting unprofessional conduct within the meaning
7 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
8 licensed under this chapter to do any of the following:

9 (b) Use any controlled substance as defined in Division 10 (commencing with
10 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
11 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
12 dangerous or injurious to himself or herself, any other person, or the public or to the
13 extent that such use impairs his or her ability to conduct with safety to the public the
14 practice authorized by his or her license.

15 (c) Be convicted of a criminal offense involving the prescription, consumption,
16 or self-administration of any of the substances described in subdivisions (a) and (b) of
17 this section, or the possession of, or falsification of a record pertaining to, the
18 substances described in subdivision (a) of this section, in which event the record of
19 the conviction is conclusive evidence thereof.

20 11. Section 2765 of the Code states:

21 A plea or verdict of guilty or a conviction following a plea of nolo contendere
22 made to a charge substantially related to the qualifications, functions and duties of a
23 registered nurse is deemed to be a conviction within the meaning of this article. The
24 board may order the license or certificate suspended or revoked, or may decline to
25 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under the
28 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

24 REGULATORY PROVISIONS

25 12. California Code of Regulations, title 16, section 1444, states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
28 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those violations
2 listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to Section
6 290 of the Penal Code.

7 13. California Code of Regulations, title 16, section 1445 states:

8 (a) When considering the denial of a license under Section 480 of the code,
9 the board, in evaluating the rehabilitation of the applicant and his/her present
eligibility for a license will consider the following criteria:

10 (1) The nature and severity of the act(s) or crime(s) under consideration as
grounds for denial.

11 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
12 under consideration as grounds for denial which also could be considered as grounds
for denial under Section 480 of the code.

13 (3) The time that has elapsed since commission of the act(s) or crime(s)
14 referred to in subdivision (1) or (2).

15 (4) The extent to which the applicant has complied with any terms of parole,
probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

17
18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(January 26, 2011 Criminal Convictions for DUI on December 26, 2010)**

20 14. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
21 and (a)(3)(A) of the Code, in that she was convicted of a crime substantially related to the
22 qualifications, duties, and functions of a registered nurse, which would also be grounds for
23 discipline for a licensed registered nurse under section 2761, subdivision (f) of the Code. The
24 circumstances are as follows:

25 a. On or about January 26, 2011, in a criminal proceeding entitled *People of*
26 *the State of California v. Uyen Anh Pham*, in Orange County Superior Court, case number
27 11WM00552, Respondent was convicted on her plea of guilty to violating Vehicle Code section
28 23152, subdivision (a) [driving under the influence of alcohol], and to violating Vehicle Code

1 section 23152, subdivision (b) [driving with a blood alcohol concentration (BAC) of .08 percent
2 or more], both misdemeanors. Respondent also admitted the special allegation that her BAC was
3 .20 percent or more, under Vehicle Code section 23538, subdivision (b)(2), for referral to a first
4 offender driving-under-the-influence program as a condition of probation.

5 b. As a result of the convictions, on January 26, 2011, as to the driving under
6 the influence charge, the imposition of sentence was suspended and Respondent was placed on
7 three (3) years informal probation. Respondent was further ordered by the Court to attend and
8 complete a nine-month, Level 2, First Offender DUI Program, to attend and complete a Mother's
9 Against Drunk Driving (MADD) Victim's Impact Panel, and pay fines, fees and restitution. As to
10 the charge of driving with a BAC of .08 percent or more, the Court stayed sentencing pursuant to
11 Penal Code section 654.

12 c. The facts that led to the convictions were that at approximately 10:42 p.m.,
13 on December 26, 2010, officers from the Westminster Police Department were dispatched to a
14 gated townhouse complex to investigate a female inside a stalled vehicle and who was possibly a
15 danger to herself or others. Upon arriving at the scene, one of the officers contacted Respondent
16 sitting in her stopped vehicle, which was blocking the street inside the townhouse complex. The
17 officer asked Respondent if she had been drinking, and she admitted that she had been drinking
18 beer. The officer observed that Respondent's eyes were bloodshot and watery, her speech was
19 slurred, and that she had a strong odor of an alcoholic beverage on her breath. Respondent was
20 unable to complete a series of field sobriety tests given by the officer. Based on her performance
21 on the field sobriety tests, her objective symptoms of intoxication, and her admission to
22 consuming alcohol, Respondent was arrested for driving under the influence.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Act If Done by Licentiate - Dangerous Use of Alcohol)**

25 15. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
26 of the Code in that on or about December 26, 2010, Respondent used alcoholic beverages to an
27 extent or in a manner that was dangerous and injurious to herself and the public, as described in
28

1 paragraph 14, above. Such conduct would be a ground for discipline under section 2762,
2 subdivision (b) of the Code for a licensed registered nurse.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Act If Done By Licentiate - Conviction of an Alcohol-Related Offense)**

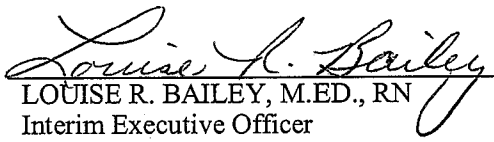
5 16. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
6 of the Code in that on or about January 26, 2011, Respondent was convicted of a criminal offense
7 involving the consumption of alcohol, as described in paragraph 14, above. Such conduct would
8 be a ground for discipline under section 2762, subdivision (c) of the Code for a licensed
9 registered nurse.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Registered Nursing issue a decision:

- 13 1. Denying the application of Uyen Anh Pham for a registered nurse license;
14 2. Taking such other and further action as deemed necessary and proper.

15 DATED: May 17, 2012

16 
17 LOUISE R. BAILEY, M.ED., RN
18 Interim Executive Officer
19 Board of Registered Nursing
20 Department of Consumer Affairs
21 State of California
22 Complainant

23 SD2012802129
24 statement of issues.rtf
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